

IT 95-94
Tax Type: INCOME TAX
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE      )  
STATE OF ILLINOIS          )  
                             )   Docket:  
      v.                    )  
                             )  
TAXPAYER                    )  
                             )   Wendy S. Paul  
                             )   Admin. Law Judge  
      Taxpayer(s)           )  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter comes on for hearing pursuant to taxpayers' timely protest of a Notice of Deficiency issued by the Department on July 6, 1995. At issue are the questions 1) whether there was a final federal change resulting in an increased tax deficiency; and 2) whether penalties should be imposed pursuant to 35 ILCS 5/804, 5/1001 and 5/1005. A hearing was held on September 21, 1995. Following the submission of all evidence and a review of the record, it is recommended that the tax deficiency and the penalties pursuant to 35 ILCS 5/804 and 5/1005 be upheld, but that the penalties pursuant to 35 ILCS 5/1001 be abated.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Notice of Deficiency. (Dept. Ex. No. 1)
2. The Department's Notice stated that taxpayers failed to file an Illinois income tax return for tax year 1989. (Dept. Ex. No. 1)
3. In their Protest, taxpayers disputed the allegation regarding failure to file, and stated that a return was timely filed but that no tax

was paid, as there was no tax liability as a result of a credit for local real estate taxes. (Dept. Ex. No. 2)

4. The tax deficiency proposed by the Notice was based upon information received from the Internal Revenue Service regarding a federal change for the taxable year which was finalized on March 9, 1993 and which, because of an Alternative Minimum Tax Computation, increased taxpayers' adjusted gross income, for Illinois purposes, to \$58,360. (Dept. Ex. Nos. 1, 3)

5. Following the federal redetermination, taxpayers filed an amended Illinois tax return reporting the federal change, but the Department had no record of taxpayers' having filed an original return. (Dept. Exh. No. 4)

6. Taxpayers failed to present any evidence to refute the changes made to their federal income tax returns or the Department's calculation of the tax deficiency based upon those federal changes.

7. Taxpayers failed to present any evidence to warrant abatement of the penalties proposed under 35 ILCS 5/1005 (failure to timely pay) or 35 ILCS 5/804 (failure to pay estimated tax).

8. Taxpayers timely filed an original tax return, which reflected a zero tax liability due to a credit for local real estate taxes, but taxpayers' copy was destroyed in a fire. (Taxpayer Exh. 1, 2; Testimony of XXXXX)

CONCLUSIONS OF LAW: Taxpayers having presented no evidence to refute either the finality of the federal change or the Department's computations of the amount of tax deficiency proposed in the Notice of Deficiency, the tax deficiency proposed in the Notice must be upheld.

Taxpayer additionally failed to present any evidence to warrant abatement of the penalties proposed pursuant to 35 ILCS 5/804 (failure to pay estimated taxes) or 35 ILCS 5/1005 (failure to timely pay taxes). Accordingly, those penalties must be imposed from the due date of the

original return, as set out in the Notice of Deficiency.

35 ILCS 1001 imposes a penalty for failure to file a tax return. Here, I find that the taxpayers overcame the Department's prima facie case on this issue, so that these penalties must be abated.

Accordingly, it is the Notice of Deficiency be upheld, with the exception of the penalties proposed pursuant to 35 ILCS 1001.

Administrative Law Judge